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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jun Dam,
Plaintiff,

v.

Mark D. Waldron,
Chapter 7 Trustee;

Pamela M. Egan,
Attorney to Ch. 7 Trustee;

Potomac Law Group, PLLC;

Giga Watt Bankruptcy Estate,

Defendants.

Case No. 2:24-cv-00417-SAB

**MOTION TO CONFIRM
JURISDICTION AND STAY
BANKRUPTCY
PROCEEDINGS**

TO THE HONORABLE JUDGE OF THE DISTRICT COURT:

INTRODUCTION

Plaintiff Jun Dam respectfully moves this Court to confirm its jurisdiction over the instant matter and to stay all related bankruptcy proceedings in **In re Giga Watt**

1 **Inc., Case No. 18-03197-FPC7** currently pending before the United States
2 Bankruptcy Court for the Eastern District of Washington. In support of this Motion,
3 Plaintiff states as follows:

4 **I. INTRODUCTION**

5 1. Plaintiff filed this action in the U.S. District Court challenging the improper
6 diversion of \$3 million in settlement funds by the Chapter 7 Trustee of Giga Watt
7 Inc.

8 2. The **Bankruptcy Court has never made a determination under 11 U.S.C.**
9 **§ 541** as to whether the disputed \$3 million settlement funds are property of the
10 bankruptcy estate.

11 3. Under **28 U.S.C. § 1334(b)**, this Court has **concurrent jurisdiction** over
12 matters related to bankruptcy, including property disputes involving third-party
13 claims.

14 4. The **first-filed rule** establishes that jurisdiction belongs in this Court, as
15 Plaintiff initiated claims here first, before any ruling by the Bankruptcy Court.

16 5. Plaintiff respectfully requests that this Court **confirm jurisdiction over the**
17 **disputed settlement funds and stay all bankruptcy proceedings involving these**
18 **funds** until ownership is determined.

1 **II. FACTUAL BACKGROUND**

2 6. The Trustee and Perkins Coie LLP entered into a **settlement agreement**
3 **resolving certain claims** involving prematurely released escrow funds. On
4 **October 5, 2023**, the Bankruptcy Court entered an **Order Approving Settlement**
5 (Dkt. 1031 in Case No. 18-03197-FPC7 - Exhibit A).

6 7. However, **settlement approval under Rule 9019 does not determine**
7 **ownership of funds under § 541.**

8 8. There is no order in the bankruptcy docket explicitly finding that the **\$3**
9 **million settlement is property of the estate.**

10 9. Plaintiff has filed **state-law claims for unjust enrichment, fraud on the**
11 **court, and constructive trust**, which are properly before this Court under its
12 original and supplemental jurisdiction.

13 **III. LEGAL BASIS FOR CONFIRMING JURISDICTION**

14 A. **The U.S. District Court Has Jurisdiction Under 28 U.S.C. § 1334(b)**

15 11. 28 U.S.C. § 1334(b) grants this Court concurrent jurisdiction over all civil
16 proceedings related to a bankruptcy case.

17 12. The **first-filed rule** applies, as Plaintiff initiated this action in the U.S.
18 **District Court before the Bankruptcy Court ruled on ownership.**

1 13. The Supreme Court in *Stern v. Marshall*, 564 U.S. 462, 131 S. Ct. 2594,
2 180 L. Ed. 2d 475 (2011) held that **state-law claims that do not arise under the**
3 **Bankruptcy Code must be decided by an Article III court.**

4 14. Plaintiff's claims for **unjust enrichment, constructive trust, and fraud on**
5 **the court are state-law claims not derived from bankruptcy law and are**
6 **properly before this Court.**

7 **B. The Bankruptcy Court Lacks Authority to Rule on Ownership Without a**
8 **§ 541 Determination**

9
10 15. **The Bankruptcy Court has not yet determined whether the \$3 million**
11 **settlement is estate property under § 541.**

12 16. **Without a § 541 ruling, the Bankruptcy Court lacks authority to**
13 **distribute or claim jurisdiction over these funds.**

14 17. *Ahcom, Ltd. v. Smeding*, 623 F.3d 1248 (9th Cir. 2010) holds that
15 bankruptcy estates cannot claim standing over third-party claims without a clear §
16 **541 property determination.**

17 18. Plaintiff's claims exist **independent of the bankruptcy estate**, meaning
18 they belong in the U.S. **District Court**.

1 19. The U.S. Supreme Court decision in *Harris v. Vigelahn*, 575 U.S. 510,
2 135 S. Ct. 1829, 191 L. Ed. 2d 783, 83 U.S.L.W. 4293 (2015) supports Plaintiff's
3 argument that post-conversion funds not already part of the bankruptcy estate at the
4 time of conversion do not automatically become estate property. As in *Harris*, the
5 **settlement funds at issue here were obtained after conversion from Chapter 11**
6 **to Chapter 7** and must be analyzed under § 541 before they can be treated as estate
7 property.

8 **C. The Bankruptcy Court Proceedings Should Be Stayed to Prevent
9 Irreparable Harm**

10 19. If the **Bankruptcy Court improperly asserts jurisdiction**, Plaintiff and
11 other token holders risk losing their rightful claim to the \$3 million.

12 20. A stay is necessary to **prevent premature distribution of funds** before a
13 final ownership determination is made.

14 21. Courts routinely **stay bankruptcy proceedings when related litigation is**
15 **pending in the U.S. District Court** to avoid conflicting rulings and protect due
16 process rights.

17 **IV. ADDITIONAL CONSTITUTIONAL & FRAUD CLAIMS SUPPORTING
18 DISTRICT COURT JURISDICTION**

19 **22. The Automatic Stay Was Misapplied**

- 1 • The escrow funds were never part of the bankruptcy estate.
- 2 • The Trustee fraudulently misrepresented the estate's interest, violating
- 3 due process.
- 4 • Under *Ahcom, Ltd. v. Smeding*, bankruptcy estates cannot claim
- 5 standing over third-party claims without a valid § 541 determination.

6 **23. Fraud on the Court Invalidates the Trustee's Position**

- 7 • The Trustee and Perkins Coie misrepresented material facts to the
- 8 Bankruptcy Court.
- 9 • Under *Hazel-Atlas Co. v. Hartford Co.*, 322 U.S. 238, 64 S. Ct. 997
- 10 (1944), fraud on the court invalidates prior rulings and allows District
- 11 Court intervention.

12 **24. Constructive Trust Should Be Imposed on the \$3 Million**

- 13 • A constructive trust is warranted because the estate wrongfully
- 14 allocated the funds.
- 15 • Under *Harris Tr. & Sav. Bank v. Salomon Smith Barney Inc.*, 530 U.S.
- 16 238, 120 S. Ct. 2180 (2000), improperly obtained assets should be
- 17 returned to their rightful owners.

V. CONSTITUTIONAL CHALLENGE TO BANKRUPTCY COURT

JURISDICTION

25. Plaintiff challenges the application of **11 U.S.C. § 362(d) on constitutional grounds**, arguing that:

- It violates due process by blocking Plaintiff's access to an independent judiciary under *Stern v. Marshall*, 564 U.S. 462, 131 S. Ct. 2594, 180 L. Ed. 2d 475 (2011).
- It forces a non-consenting plaintiff into a non-Article III tribunal in violation of *Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. 665 (2015).
- It conflicts with 28 U.S.C. § 157(a), which makes referral to Bankruptcy Court discretionary, not mandatory.

26. Under **Wellness**, a litigant may withdraw consent to bankruptcy court jurisdiction at any time. Since Plaintiff has explicitly withdrawn consent, only an Article III judge may adjudicate this matter.

27. The continued adjudication of this dispute in Bankruptcy Court despite Plaintiff's explicit withdrawal of consent violates separation of powers and due process.

1 **28. This Court must consider the Article III challenge before enforcing the**
2 **automatic stay against Plaintiff.** If the stay is applied, it must be adjudicated by
3 **the U.S. District Court, not the Bankruptcy Court.**

4 **VI. REQUESTED RELIEF**

5 **WHEREFORE**, Plaintiff respectfully requests that this Court:

- 6 **1. Confirm its jurisdiction over this dispute under 28 U.S.C. § 1334(b);**
- 7 **2. Issue an order staying all bankruptcy proceedings related to the \$3**
million settlement funds until this Court rules on ownership;
- 8 **3. Prevent the Trustee from distributing or using the \$3 million settlement**
funds pending further order of this Court;
- 9 **4. Grant such other and further relief as this Court deems just and proper.**

10 Dated this 18th day of February, 2025

11 /s/ Jun Dam

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CERTIFICATE OF SERVICE

I, Jun Dam, hereby certify that on 2/18/25, I electronically filed the foregoing

MOTION TO CONFIRM JURISDICTION AND STAY BANKRUPTCY

PROCEEDINGS with the Clerk of the Court using the CM/ECF system, which

will send notification of such filing to all registered CM/ECF participants.

I declare under penalty of perjury under the laws of the United States that the

foregoing is true and correct.

Dated this 18th day of February, 2025

/s/ Jun Dam

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